

THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.NO.1781 OF 2006

Dt.31.1.2006

Between:

M/s.Akash Electric Works, Amberpet,
Hyderabad, rep. by its Partner,
E.Kishore Kumar ... Petitioner

And

The Superintending Engineer (Electrical),
Central Public Works Department,
Government of India, Hyderabad
And 2 others. ... Respondents

ORDER:

The petitioner questions the inaction of the respondents in not issuing tender form pursuant to the tender notification vide Office Lr.No.25(31)06/HCED.1/131, dt.18.1.2006 and Draft NIT Nos.194 & 195/2005-06/HCED.I/HCES.D1/CRPF/Hyderabad of the second respondent as illegal and arbitrary and against the principles of natural justice.

The petitioner submits that he is Class-II Electrical Contractor having obtained licence from the A.P.Electrical Licensing Board to carry out electrical installation works valid up to 2.6.2006. The petitioner has been registered with the respondent – Central Public Works Department, Government of India and has been enlisted as Class-II (Electrical) category for a period of four years from 28.1.2005. It is

stated that tender notification has been issued by the 2nd respondent on 18.1.2006 inviting tenders from the approved eligible contractors in respect of certain works and the sealed tenders are directed to be submitted on 28.1.2006. It is stated that the petitioner complied with all the formalities for supply of tender schedules by depositing EMD and the cost of tenders, but the said tender schedules are not supplied to the petitioner. Questioning the said action this writ petition has been filed and this Court on 30.1.2006 while posting the matter today directed the respondents that the tenders shall not be finalized until further orders.

On instructions, the learned Standing Counsel appearing on behalf of the respondents submits that the petitioner is not entitled for continuation of one of the enlisted contractors of C.P.W.D 2005 and he is not eligible for receipt of tender schedules.

The learned counsel for the petitioner submits that in fact no order has been passed and no communication has been made removing the name of the petitioner from the enlistment of contractors and if any amount is due and payable by the petitioner towards pending works the petitioner may not be disqualified.

I have perused the record and the rules relating to Enlistment of Contractors in CPWD, 2005. The eligibility for enlisting the contractor is that of financial soundness which shall be judged on the basis of Banker's certificate or the working capital certificate, as the case may be, issued by the Bankers of the contractor on the format prescribed in Annexure-V and such certificate shall be issued by a scheduled bank and shall be submitted, in original, in a bank sealed cover, addressed to the enlistment authority. As per Rule 23.3 of the said Rules, if a contractor is declared or in the process of being declared bankrupt, insolvent, wound up, dissolved or partitioned, the name of the contractor may be removed from the approved list of contractors. The banker of the petitioner, namely, Karnataka Bank addressed a letter dated 1.9.2005 to the General Manager, Accounts and Finance, Central Public Works Department, Hyderabad, stating that the

petitioner is due to the bank the sum of Rs.28,79,275.65 and the account of the petitioner is non-performing with the bank and the petitioner is still doing works with the department and accordingly requested the respondents to remit the bills payment in respect of the works of the petitioner directly to the bank as the petitioner has executed Power of Attorney authorizing the banker to collect pending bills. A copy of the said Power of Attorney was also placed before this Court. Another letter dated 24.10.2005 was also addressed by the banker to the 2nd respondent requesting to hold the bills payable to the petitioner and directly pay the same to the bank towards the amount payable by the petitioner. In the said letter the first respondent has taken a decision not to issue any tender schedules to the petitioner after 3.11.2005. Pursuant to the said action of the first respondent, the 2nd respondent also addressed a letter dated 30.1.2006 to the petitioner informing that as the petitioner is in the process of being declared bankrupt under the Rule 23.3(I) of Enlistment of the Contractors 2005, the petitioner cannot be considered for issuance of tenders as per the instructions of the first respondent.

In view of the aforesaid facts and circumstances of the case, I am of the opinion that when the petitioner has already executed power of attorney to the bank to recover all the amounts in respect of pending bills, it may not be just and proper for the Department to take risk for the execution of works pursuant to the tender notifications. As the first respondent has already taken a decision for not issuing the tender schedules to the petitioner, the petitioner is not entitled to seek any relief in this writ petition. However, any amount paid by the petitioner for supply of tender schedules shall be refunded.

The writ petition is devoid of merit and it is accordingly dismissed. No order as to costs.

(V.ESWARAIAH, J.)

31.1.2006

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